

## Undue Hardship Instructional Guide

### Purpose:

The purpose of this guide is to define what constitutes an “undue hardship” for determining the application of a transfer of assets penalty period under Medicaid. This guide also outlines the procedures that must be followed by the applicant/beneficiary to file an undue hardship claim.

### Undue Hardship Criteria:

Under 42 USC 1396p(c)(2)(D), an individual applying for or receiving Medicaid long-term care services will be subject to a transfer of assets penalty in cases where the applicant/beneficiary made an impermissible transfer or a permissible transfer that is subject to the penalty. During this penalty period, which starts on the first day of the month in which the transfer was made, the applicant/beneficiary will be ineligible for Medicaid long term care services but may receive other Medicaid services if eligible.

An individual may be determined exempt from the application of the transfer of assets penalty in cases where the individual can show that an “undue hardship” exists. An undue hardship exists if the applicant/beneficiary can show that denying Medicaid long term care services, either institutional or home and community based services (HCBS) including through the Elderly and Persons with Disabilities (EPD) waiver or the Individuals with Developmental Disabilities waiver (IDD), would threaten the applicant’s/beneficiary’s life or health or would deprive him/her of food, clothing, shelter or other necessities of life.

### Filing a Claim of Undue Hardship:

If the applicant/beneficiary wishes to make a claim of an undue hardship, she/he must complete the Asset Transfer Undue Hardship Claim Form and provide the documentation described on the form. The individual must complete the Asset Transfer Undue Hardship Claim Form and return it to ESA by the deadline stipulated on the form to prevent the application of the penalty period.

The applicant/beneficiary has the burden of proof and must provide written evidence to clearly substantiate: (1) the reason for the transfer; (2) the risk of loss of long term care institutional or home and community based services, and (3) that losing Medicaid long term care services will *either* threaten the individual’s life or health *or* will result in deprivation of food, clothing, shelter or other necessities of life. If the applicant/beneficiary is asserting that the denial of long term care services will threaten his/her life or health, the applicant/beneficiary must submit a signed statement from a physician to that effect.

Written documentation should include any evidence that the applicant/beneficiary believes is probative of the idea that discontinuation of long term care services will result in undue hardship, as defined. Examples of acceptable documentation include:

- A letter from a nursing facility or home health agency documenting that the applicant/beneficiary’s access to services will be discharged imminently.
- A physician’s statement
- Rent statements or payments
- Grocery bills
- Clothing bills

**ESA's Evaluation of Undue Hardship:**

The Department of Human Services Economic Security Administration (ESA) will review the application and documentation provided and make a determination that takes into account all the information presented. An undue hardship exists if the preclusion of receiving long term care services would threaten the applicant's/beneficiary's life or health, or would deprive him/her of food, clothing, shelter or other necessities of life.

If documentation is presented to the ESA worker which demonstrates that the individual would be deprived of food, clothing or shelter if the penalty period is implemented, the worker shall grant a finding of undue hardship. If an undue hardship exemption is granted, the penalty period will not be imposed and the individual will be determined eligible for long term care services without interruption or delay.

If the ESA worker determines that the criteria for an undue hardship has not been met, then the ESA worker will determine the penalty period and the applicant/beneficiary will be precluded from receiving long-term care services for the penalty period originally included on the notice of ineligibility.

Any questions regarding this policy should be directed to Gary Watts, Management Analyst, Health Care Policy and Research Administration, Department of Health Care Finance, at 202-719-6627 or email at [gary.watts@dc.gov](mailto:gary.watts@dc.gov).